

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
EASTERN DIVISION**

Civil Action No: 4:24-cv-00051-M-RN

CYNTHIA B. AVENS,

Plaintiff,

v.

FARIS C. DIXON, JR., DISTRICT
ATTORNEY; VIDANT/ECU
HEALTH MEDICAL CENTER; DR.
KAREN KELLY,
MEDICAL EXAMINER,
JOHN/JANE DOE, JOHN/JANE
DOE, and JOHN/JANE DOE

Defendants.

**DR. KAREN KELLY'S
MOTION TO DISMISS**

Fed. R. Civ. P. 12(b)(1) & 12(b)(6)

NOW COMES Defendant, Karen Kelly, M.D., pursuant to Rule 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure, and respectfully moves the Court to dismiss the Complaint, with prejudice, due to lack of jurisdiction over the subject matter of Plaintiff's claims and failure to state a claim upon which relief may be granted. In support of this Motion, Dr. Kelly shows the Court as follows:

1. Plaintiff asserts claims against Defendants, including Dr. Kelly, for violation of her civil rights under 42 U.S.C. §§ 1981, 1983, 1985, 1988, 200d, and 18 U.S.C. 241.

2. Eleventh Amendment immunity and sovereign immunity bar Plaintiff's claims under §§ 1981 and 1983 against Dr. Kelly in her official capacity.

3. Qualified immunity bars Plaintiff's claims under §§ 1981 and 1983 against Dr. Kelly in her individual capacity.

4. Plaintiff's claims under §§ 1981 and 1983 fail because she has not alleged a violation of a federal law or constitutional right.

5. Plaintiff has failed to sufficiently plead the essential elements of a claim under § 1985 including intentional engagement in a conspiracy, an overt act in furtherance of a conspiracy, invidious discriminatory intent, deprivation of equal enjoyment of rights, or resulting injury.

6. Plaintiff has failed to sufficiently plead the essential elements of a discrimination claim under Title VI (§ 2000d), including intentional discrimination, denied access to participation in a program or activity receiving Federal financial assistance, or disparate treatment.

7. Plaintiff has failed to sufficiently plead the essential elements of State law claims for obstruction of justice or conspiracy to obstruct justice, including intent to obstruct justice, acts which impede or hinder public or legal justice, or an agreement with others to obstruct justice.

WHEREFORE, for the reasons set forth herein, and in the arguments and legal authorities set forth in Dr. Kelly's Memorandum in Support of her

Motion to Dismiss, Dr. Kelly respectfully requests the Court to grant her Motion to Dismiss and that Plaintiff's Complaint be dismissed in its entirety with prejudice.

This 29 day of May, 2024.

JOSHUA H. STEIN
Attorney General

/s/ Jeremy D. Lindsley

Jeremy D. Lindsley

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Attorney for Dr. Karen Kelly

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing Motion to Dismiss with the Clerk of Court using the CM/ECF system and was served electronically upon the following:

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This 29th day of May, 2024.

/s/ Jeremy D. Lindsley
Jeremy D. Lindsley
Assistant Attorney General

